

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

KENNY BEANE,

Plaintiff,

vs.

HAROLD K. PIKE, III,

Defendant.

Case No. 12-823-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on plaintiff Kenny Beane's motions for leave to proceed *in forma pauperis* (Doc. 2) and to appoint counsel (Doc. 3).

A federal court may permit an indigent party to proceed without pre-payment of fees. 28 U.S.C. § 1915(a)(1). Nevertheless, a court can deny a qualified plaintiff leave to file *in forma pauperis* or can dismiss a case if the action is clearly frivolous or malicious or fails to state a claim. 28 U.S.C. § 1915(e)(2)(B)(i) & (ii). The test for determining if an action is frivolous or without merit is whether the plaintiff can make a rational argument on the law or facts in support of the claim. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Corgain v. Miller*, 708 F.2d 1241, 1247 (7th Cir. 1983). An action fails to state a claim if it does not plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). When assessing a petition to proceed *in forma pauperis*, a district court should inquire into the merits of the petitioner's claims, and if the court finds them to be frivolous, it should deny leave to proceed *in forma pauperis*. *Lucien v. Roegner*, 682 F.2d 625, 626 (7th Cir. 1982).

The Court is satisfied from Beane's affidavit that he is indigent. However, it cannot

determine that his cause of action is not frivolous or malicious. Beane tells the Court which of his constitutional rights he thinks defendant Harold Pike III has violated, but he does not describe the facts of what happened between him and Pike that caused those violations. The Court needs to know Beane's view of the facts of what happened between Beane and Pike before it can decide whether to allow him to proceed without pre-payment of fees. The Court **ORDERS** that Beane shall have up to and including August 20, 2012, to file a supplement to his complaint explaining the facts that gave rise to the violations alleged in the complaint. The Court **RESERVES RULING** on Beane's pending motions (Docs. 2 & 3) until after August 20, 2010. If Beane is unable to tell the Court the facts on which his claims are based, the Court may dismiss this action for failure to state a claim.

IT IS SO ORDERED
DATED: August 1, 2012

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE